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Office of the General Counsel

B-280833

September 2, 1998

The Honorable John McCain  
Chairman  
The Honorable Ernest F. Hollings  
Ranking Minority Member  
Committee on Commerce, Science, and Transportation  
United States Senate

The Honorable Thomas J. Bliley, Jr.  
Chairman  
The Honorable John D. Dingell  
Ranking Minority Member  
Committee on Commerce  
House of Representatives

Subject: Federal Communications Commission: Unlicensed NII Devices in the  
5 GHz Frequency Range

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Federal Communications Commission (FCC), entitled "Unlicensed NII Devices in the 5 GHz Frequency Range" (ET Docket No. 96-102, FCC 98-121). We received the rule on August 18, 1998. It was published in the Federal Register as a final rule on July 31, 1998. 63 Fed. Reg. 40831.

The final rule responds to petitions for reconsideration of a prior rule issued by the FCC concerning the 5 GHz spectrum involving Unlicensed National Information Infrastructure (U-NII) devices. The prior rule was the subject of our major rule report dated February 14, 1997 (B-276123, GAO/OGC-97-19).

This final rule permits the devices to operate with one watt maximum transmitter output power and directional antennas of up to 23 dBi gain. Also, the rule amends the prior rule to specify transmit power limits in the form of a logarithmic equation as a function of channel bandwidth for all U-NII devices in all U-NII bands and clarifies the rule regarding unwanted emissions and specifies these limits in terms of absolute radiated power levels.

Enclosed is our assessment of the FCC's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the FCC complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Federal Communications Commission is Judy England-Joseph, Director for Housing and Community Development Issues. Ms. England-Joseph can be reached at (202) 512-7631.

Robert P. Murphy  
General Counsel

Enclosure

cc: Ms. Kathleen Fagan  
AMD-Performance Evaluation and  
Records Management  
Federal Communications Commission

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE FEDERAL COMMUNICATIONS COMMISSION  
ENTITLED  
"UNLICENSED NII DEVICES IN THE 5 GHZ FREQUENCY RANGE"  
(ET Docket No. 96-102, FCC 98-121)

(i) Cost-benefit analysis

The FCC, in its report to our Office, states that it was not required to prepare and did not prepare a cost-benefit analysis of the final rule.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The FCC had prepared Initial and Final Regulatory Flexibility Analyses in connection with its prior rulemakings, and the preamble to this final rule contains a Supplemental Final Regulatory Analysis discussing the impact of the changes made by the rule.

In its discussion of the information required by the Act, the FCC discusses the steps taken to minimize the economic impact on small entities. It concluded that the changes made by this final rule do not have a significant impact on small entities.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As an independent regulatory agency, the FCC is not subject to title II of the Unfunded Mandates Act of 1995.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule results from the FCC's consideration of petitions of reconsideration which were filed following the FCC's issuance of the prior rulemaking dealing with NII devices. That prior rule was issued using the notice and comment procedures contained in 5 U.S.C. § 553.

Since there was neither a proposed rule nor the receipt of comments regarding the instant rule, the rule meets the exception requirements of 5 U.S.C. § 808(2) to the 60-day delay in the effective date of a major rule normally required under the Congressional Review subtitle of the Small Business Regulatory Enforcement Fairness Act of 1996.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains no information collections which are subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act.

Statutory authorization for the rule

The rule was issued pursuant to sections 4(i), 303(c), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), 303(f), 303(g), 303(r), and 405.

Executive Order No. 12866

The rule, promulgated by an independent regulatory agency, is not subject to the review requirements of Executive Order No. 12866.